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cation No 3877 of 89

Date of decision: 19/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARJIBHAI KHODABHAI RABARI vs DIRECTOR

Appearance: MR PB MAJMUDAR for Petitioner MR RJ OZA for
Respondent No. 1

Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

The petitioners who were working as part time sweepers on

the fixed pay filed this writ petition in which two fold prayers have been made. Firstly, it has been prayed that the order dated 16.5.1989 at Annexure.C under which their services were terminated may be quashed and set aside. Secondly it has been prayed that the respondents may be directed to take them back in service with continuity of service and absorb them on the post of peon. The learned counsel for the petitioner contended that the termination of services of the petitioners have been made by way of penalty. As their services were terminated by way of penalty it was incumbent upon the respondents to give them a reasonable opportunity of defending their case. Neither the charge-sheet was given nor any show cause notice was given and in a straight way, their services were terminated. It has next been contended that though the order of termination of services of the petitioners is innocuous, the cause of termination of their services is the alleged misconduct as incorporated in the reply to the writ petition. The petitioners' services were terminated for their unsatisfactory work as well as unauthorised absence. The learned counsel for the petitioner contends that it is a case of simple termination of services of the petitioners who were only part time employees . As it was termination simplicitor without any stigma, it was not incumbent upon the respondents to hold an inquiry and afford any opportunity of taking defence to the petitioners. I have considered the rival contentions made by both the parties. The petitioners were appointed as part time employees and they were required to perform the duties for about four hours in a day. Even if the petitioners were part time employees, their services could not have been dispensed with in the manner in which it has been done in the present case. The petitioner no.1 was appointed as part time employee in the year 1976 and the petitioner no.2 was appointed in the year 1979. Their services as part time sweepers were terminated after more than 13 and 10 years respectively. It is true that the order of termination of services is innocuous but nevertheless from the reply to the writ petition, it is clear that the ground for termination of their services is of remaining absent by them from duties. Remaining absent unauthorisedly is a serious misconduct and in case the respondents considered that their services should be dispensed with then it was incumbent upon them to follow the reasonable procedure and to comply with the principles of natural justice. In reply to the writ petition the respondents have come up with a case that the work of the petitioners was found unsatisfactory for which notices have been given to them and they have not even cared to give reply to the said notices and continued to indulge into the same activity of remaining on unauthorised absent. The services of the petitioners were therefore, terminated. This reply of the respondents clinches the issue . The basic cause for termination of the services of the petitioners is their misconduct of remaining unauthorised absent from duty. In para 6 of the reply it has been further stated by the respondents that the petitioners were served with

the show cause notices dt. 22.5.87, 23.11.87, 20.1.88, 23.4.88 and 16.5.89 for remaining unauthorised absent from duty and the petitioners have not taken care to submit their explanation. It has further been averred in the very para that because of the attitude of the petitioners, the administration suffered and considering all relevant aspects, the services of both the petitioners were terminated by order at Annex.C collectively. Same averments have been reiterated by the respondents in para 9. Reading all these averments, it is clear that they support the case of the petitioners that the basis of termination of services of the petitioners, is the alleged misconduct of remaining absent from duty unauthorisedly. The order of termination is dated 16.5.89. The show cause notices, a reference of which has been made earlier are of the period of two years to one year earlier to the order of termination except the last show cause notice which is of 16.5.89. The last show cause notice was given on 16.5.89 and on the very day the order of termination has been passed. If the matter is considered in the background of these factual matrix, the contention of respondents in the reply that the petitioners were afforded a reasonable opportunity to make submissions in the matter is not correct. It is a case where on the same day the show cause notice was given and the order of termination has been passed and even then the contention of the respondents is that they acted very reasonably, which cannot be accepted. It is a case where in the garb of simplicitor termination of services, the petitioners have been penalised for their alleged misconduct of remaining absent unauthorisedly from duty without holding any inquiry. In the rejoinder, the petitioners have come up with a case that they have not been given any show cause notice but only 3 letters were given to which the petitioners had explained satisfactorily. Their explanation was accepted and which clearly comes out from the fact that no action whatsoever has been taken against the petitioners. None of the show cause notices has been produced by the respondents along with this writ petition. What was the contents thereof and what was the substance have been kept away from the consideration of the court. The petitioners are low paid part-time employees working for the last more than 10-13 years and even if it is accepted for the sake of arguments that they remained on some occasion absent from duty without leave, the termination of their services cannot be said to be justified. The termination of services of the petitioners cannot be said to be proportionate to the alleged guilt. More so when even the absence period was not given in the reply to the petition except the bald averments. The order of termination of the services of the petitioners is punitive in nature which has been passed without holding any inquiry and such the same cannot be allowed to stand. But at the same time, the petitioner, cannot be given back wages. It is not the case of the petitioners that they were in full time employment of the of the respondents. The petitioners were part-time employee and has to work only for 4

hours in a day and as such it cannot be said that even during the period they were in service they were not elsewhere working also. In view of these facts and circumstances of the case I do not consider it to be a fit case where the respondents should be directed to give the petitioners back wages. Moreover, it is not the case of the petitioners that during this interregnum period, they remained jobless. Looking to the nature of work which the petitioners were doing while in the service of the respondents it is difficult to infer that during this interregnum period they were not in gainful employment.

2. In the result, this writ petition is allowed in part.

The orders of termination of the services of the petitioners dated 16.5.89 Annexure.C are set aside. The respondents are directed to reinstate the petitioners in service as part time employees forth with on the same terms and conditions but they shall not be entitled to any backwages during the interregnum period. However, the petitioners shall be entitled to wages from today. Rule is made absolute in the aforesaid terms. No order as to costs.

for correction pl.see the original.